

Town of Amherst
Zoning Board of Appeals - Special Permit

DECISION

Applicant: Ester Rodrigues and Henrique Correia

Date application filed with the Town Clerk: May 24, 2005

Nature of request: Petitioner seeks a Special Permit, under Section 9.22 of the Zoning Bylaw, to operate a Brazilian Clothing Boutique and a Home Healthcare Business.

Location of property: 321 Main Street, (Map 14B, Parcel 28, R-G Zone)

Legal notice: Published in the Daily Hampshire Gazette on June 8 and June 15, 2005, and sent to abutters on June 6, 2005.

Board members: Ted Rising, Joan Golowich and Barbara Ford

Submissions:

Prior to the public hearing which was scheduled for June 23, 2005, the following documents were submitted:

By the applicant

- A sketch plan of the site showing the approximate location of 20 existing parking spaces
- A sketch plan of the interior of the second floor space proposed to be used for offices
- An aerial photograph of the site showing the building in relation to the site, roadways and surrounding properties and showing the location of the proposed boutique and office uses
- A Management Plan
- Designs for the proposed signs for the Brazilian clothing boutique and the home health care business

By the real estate agent

- A sketch plan of the building showing the allocation of spaces for the first and second floors of the building
- A series of plans showing allocation of spaces within the building over the past several years

Site Visit: June 7, 2005

The Board was met at the site by the applicants, Ester Rodrigues and Henrique Correia, and the real estate agent, Patrick Kamins of Kamins Real Estate. They viewed the following site features:

- The location, across the street from the Emily Dickinson Museum, on a corner lot, adjacent to residential uses;
- The proximity of the Commercial District to the east;
- The deteriorating condition of the parking lot pavement and landscape areas;
- The other businesses, a karate studio, a travel agency and a bicycle shop, in the building;
- The interior of the store space proposed to be used for the boutique;
- The interior of the proposed office space on the second floor;
- The interior stairway connecting the two spaces, which was very steep and difficult to navigate;
- The exterior stairway, connecting the upper floor to the parking lot on the east side.

Public Hearing: June 23, 2005.

At the public hearing the applicant, Ms. Rodrigues, presented the petition.

Ms. Rodrigues made the following comments:

- There will be two parts to her business, a store selling clothes, shoes and nurses uniforms to be housed in the storefront space and a home health care office on the second floor, behind the storefront space;
- The home health care business will contain two or three desks;
- In the office Ms. Rodrigues will do paperwork connected with her home health care business.

The Board inquired about the management plan and the number of employees.

Ms. Rodrigues stated that there would be two employees in the office and one or two employees in the store. She emphasized that these are two totally different businesses. The upstairs will have nurses or health care managers as employees. The downstairs will be only a clothing store. Ms. Rodrigues' grown children (ages 21 and 23 years old) will work in the store.

The hours of operation of the store will be:

9 a.m. to 8 p.m. Monday through Friday
12 noon to 6 p.m. on Saturday and Sunday.

The hours of operation of the office will be:

9 a.m. to 5 p.m. Monday through Friday.

Parking requirements will be as follows:

Home Health Care business – no visitors, so only employees need parking spaces

Store – 2 parking spaces for employees, 2 parking spaces for customers.

The Board noted the following:

- Parking for this site is not assigned to a particular business but is on a “first come, first served” basis.
- One of the other tenants, a karate studio, tends to do most of its business in the afternoons and evenings. The parking requirements for the karate studio may only overlap with Ms. Rodrigues businesses for a small part of the day.
- There is enough parking for the all the business in the building because there are approximately 20 spaces on the site.
- Deliveries should occur during business hours.
- The applicant has not requested to change or add lights.
- The steps connecting the store with the office space behind it are very difficult to navigate, but there is another means of entry and egress from the office space, down the exterior stairs on the east side of the building.
- The planting areas on the site, particularly on the east side, were not well-maintained.

The Board requested that the Building Commissioner inspect the interior stairway to determine if it is safe for use.

The Board inquired about the proposed signs.

Ms. Rodrigues stated that there would be one large sign above the main door and window and one small sign inside the office on the side, which would be visible from the outside.

The Board discussed the locations of the signs and requested that Ms. Rodrigues bring back more information about the size and location of the small sign for the home health care business. They asked Ms. Rodrigues to bring photographs of the building to show where the new sign for the home health care business will go.

Ms. Rodrigues noted that the owner of the building was planning to do some landscape improvements.

Joan Golowich MOVED to close the evidentiary portion of the public hearing. Barbara Ford SECONDED the motion. The Board VOTED unanimously to close the evidentiary portion of the public hearing.

Public Meeting

The Board discussed the application and conditions that would be appropriate to impose if the Special Permit were granted.

The Board discussed issues regarding cleaning up and repairing the parking area, filling the potholes, repairing broken wheel-stops, cleaning out overgrown planting areas, and signs.

Barbara Ford MOVED to continue the public meeting to July 19, 2005 for the purpose of discussing, with the owner or his authorized agent, proposed signs, management plans and site and landscape improvements. Joan Golowich SECONDED the motion. The Board VOTED unanimously to continue the public meeting to July 19, 2005.

Barbara Ford MOVED to approve the application with conditions. Joan Golowich SECONDED the motion. The Board VOTED unanimously to approve the application with conditions.

Continued Public Meeting July 19, 2005

Pat Kamins of Kamins Real Estate, and Ester Rodrigues, the applicant, met with the Board. The issues discussed were as follows:

- Mr. Kamins presented a new Management Plan for the entire site, stating how Kamins Real Estate proposed to manage the site and setting forth the tenant's and landlord's obligations. The Management Plan included information on proposed landscape improvements. The Board requested that Mr. Kamins revise the Management Plan to include information about the landlord's responsibility for exterior repairs and maintenance of the building. The Board expressed concern about the condition of the railing on the exterior stairs leading up to the second floor. The Board also requested that Mr. Kamins submit a more detailed landscape plan showing plants to be removed, plants to be installed and the proposed species, sizes and locations of the new plants. The Board expressed concern about the weeds that have overtaken the planting beds on the site and about the weeds that have sprung up along the east wall of the building.
- The Board questioned Ms. Rodrigues to clarify the proposed number of employees for each business.
- The Board discussed the list of proposed landscape improvements submitted by Mr. Kamins as part of the Management Plan for the site. The Board encouraged Ms. Rodrigues to install a planter box in front of the main store window but agreed that it should be low enough so as not to hide the merchandise which may be displayed in the window.

Barbara Ford MOVED that the Board require Ms. Rodrigues and Mr. Kamins to return to a public meeting on August 11, 2005, to present a revised Management Plan for the entire site, a more detailed landscape plan and information about the small sign for the home healthcare office. Joan Golowich SECONDED the motion. The Board VOTED unanimously to require Ms. Rodrigues and Mr. Kamins to return to a public meeting on August 11, 2005 for review and approval of a revised Management Plan, landscape plan and sign.

Findings:

Under Section 9 of the Zoning Bylaw, Non-Conforming Lots, Uses and Structures, the Board found that the proposed use of the building and site will not be substantially different from the previous use (the proposed boutique/store had formerly been a flower shop and the upstairs proposed business office had previously been permitted to be used for a business office not serving the public). The proposed use of the building and site may be beneficial to the neighborhood due to an upgrading of the interior of the retail space and improvements to the landscape and parking.

Under Zoning Bylaw Section 10.38 the Board found that:

10.380 and 10.381 – The proposal is suitably located in the neighborhood and is compatible with existing uses because the site is located on a well-traveled street, at a crossroads and there are other businesses in the building and on nearby properties.

10.382 and 10.383 – The proposal would not constitute a nuisance or an inconvenience or hazard to abutters, vehicles or pedestrians because of the small number of people expected to be in the store at one time.

10.384 – Adequate and appropriate facilities would be provided for the proper operation of the proposed use because the spaces are large enough to accommodate the proposed uses and there are bathroom facilities available on site.

10.386 – The proposal ensures that it is in conformance with the Parking and Sign regulations of the town because there are 20 parking spaces existing on the site which are shared by the businesses which occupy the building. The businesses expect to require a total of four (4) parking spaces at a time, for employees and customers. The main sign for the boutique has been reviewed and approved by the Board and is in keeping with other signs on the building and signs that have been there in the past. The sign for the home health care business will be reviewed and approved by the Board prior to installation.

10.387 and 10.388 – The proposal provides convenient and safe vehicular and pedestrian movement within the site and in relation to streets, property or improvements and the proposal ensures adequate space for the off-street loading and unloading of vehicles, because there is an adequate number of parking spaces available on site in several different locations, small numbers of people are expected to be in the store at one time, no visitors are expected at the home health care office other than the employees and the owner and deliveries will be made on the side of the building, where parking is available.

10.389 – The proposal provides adequate methods of disposal and/or storage for sewage, refuse, recyclables and other wastes because the property is connected to the town sewer and the owner of the business will share a dumpster with other businesses in the building and the landlord will contract with a local trucking company for weekly trash and recycling removal.

10.391 – The site is in an historic district and across from the historic Dickinson Museum. The conditions of the permit will ensure that these important historic features are protected.

10.392 – The proposal will provide adequate landscaping when the conditions of the permit related to landscaping have been met.

10.393 – The proposal will not add exterior lighting because there is adequate ambient light at the street corner and light from adjacent business and from the interior of the store.

10.395 – The proposal does not create disharmony with respect to the use, scale and architecture of existing buildings in the vicinity because no exterior changes other than signs are being proposed and the use is in harmony with other uses in the building and in the neighborhood.

10.398 – The proposal is in harmony with the general purpose and intent of the Zoning Bylaw because it protects the health, safety, convenience and general welfare of the inhabitants of the Town of Amherst.

Zoning Board Decision

At the public meeting on June 23, 2005, Barbara Ford MOVED to approve the application, with conditions. Joan Golowich SECONDED the motion.

For all the reasons stated above, the Board VOTED unanimously to GRANT a Special Permit, with conditions, to Ester Rodrigues and Henrique Correia to operate a Brazilian Clothing Boutique and a Home Healthcare Business, at 321 Main Street (Map 14B, Parcel 28, R-G Zone).

TED RISING

JOAN GOLOWICH

BARBARA FORD

FILED THIS _____ day of _____, 2005 at _____,
in the office of the Amherst Town Clerk _____.
TWENTY-DAY APPEAL period expires, _____ 2005.
NOTICE OF DECISION mailed this _____ day of _____, 2005
to the attached list of addresses by _____, for the Board.
NOTICE OF PERMIT or Variance filed this _____ day of _____, 2005,
in the Hampshire County Registry of Deeds.

Town of Amherst
Zoning Board of Appeals

SPECIAL PERMIT

The Amherst Zoning Board of Appeals, hereby grants a Special Permit under Section 9.22 of the Zoning Bylaw to Ester Rodrigues and Henrique Correia, to operate a Brazilian Clothing Boutique and a Home Healthcare Business, at 321 Main Street (Map 14B, Parcel 28, R-G Zone), with the following conditions:

1. The hours of operation shall be as follows:
For the boutique/store:
9 a.m. to 8 p.m. Monday through Friday
12 noon to 6 p.m. on Saturday and Sunday.
For the office:
9 a.m. to 5 p.m. Monday through Friday.
2. The owner of the building or his authorized agent shall submit a landscape plan for approval by the Board at a business meeting, on Thursday, August 11, 2005, showing proposed plantings including species and locations, for the planting areas at the corner of Main Street and Dickinson Street and at the bottom of the exterior stairs on the east side of the building.
3. Site improvements shall be performed prior to occupancy and continuously maintained as follows:
 - Remove rubble from the parking lot
 - Clean up the alley south of the building
 - Remove weeds and replace scrub plants with ground cover or shrubs
 - Install plants according to the landscape plan to be approved by the Board as described in Condition # 2 above.
 - Maintain all plantings in good condition.
4. The owner of the building or his authorized agent shall meet with the Board prior to occupancy of the store and office space to discuss the required site improvements listed in Condition # 2 above and to discuss with the Board how these site improvements will be accomplished, on Thursday, August 11, 2005.
5. The owner of the building or his authorized agent shall submit to the Board for approval at a business meeting on Thursday, August 11, 2005, a Management Plan for the site, stating what is to be done and who will perform which items of work.

6. There shall be no more than three (3) employees in the office and no more than three (3) in the boutique/store at one time, including the applicant.
7. Information regarding the design and location of the small sign for the home health care business shall be submitted to the Board for review and approval at a public meeting on Thursday, August 11, 2005.

TED RISING, Chair
Amherst Zoning Board of Appeals

DATE